

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:22-CV-00229-KDB-DCK**

INDUSTRIAL TIMBER, LLC,

Plaintiff,

v.

**JACKSON FURNITURE
INDUSTRIES, INC.,**

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees, Doc. No. 24. By this motion, Plaintiff seeks attorneys' fees incurred in its successful Partial Motion to Dismiss Defendant's Amended Counterclaims. *See* Doc. No. 21. The Court readily concluded that Defendant is not entitled to pursue claims for unfair trade practices and various torts in this contract dispute absent allegations of truly aggravated conduct and does not want to encourage the filing of such claims, which are far too prevalent in commercial litigation; however, the Court does not find in the exercise of its discretion under N.C. Gen. Stat. § 75-16.1 that attorneys' fees should be awarded. Specifically, the Court cannot conclude that the claims were both frivolous and malicious. *See* N.C. Gen. Stat. § 75-16.1(2). Accordingly, the motion will be denied. The Court makes this ruling prior to the filing of a response and a reply as a seasonal gift to the parties and counsel to avoid unnecessary expense and effort.

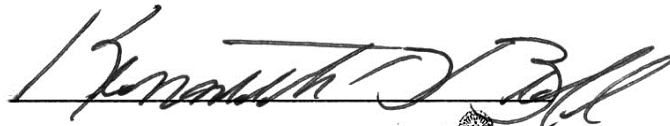
NOW THEREFORE IT IS ORDERED THAT:

1. Plaintiff's Motion for Attorney Fees (Doc. No. 24) is DENIED; and

2. This case shall proceed to trial on the merits on the remaining claims in the absence of a voluntary resolution of the dispute among the parties.

SO ORDERED ADJUDGED AND DECREED.

Signed: December 19,

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

